IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

W.P. NO. 1681 of 99

PETITIONER :- Shivkumar Soni S/o Dalluprasad Soni, aged 36 yrs, R/o Village Baloda, Tahsil Janjgir, Distt Janjgir. (M.P.)

. Versus.

RESPONDENTS :- 1. Chairman cum Managing Director South Eastern Coal Field Ltd (SECL) Seepat Road, Bilaspur (M.P.)

2. Chief General Manager S.E.C. L. Korba Area Korba.

3. Dy. Chief Personnel Manager S.E.C.L. Korba Area Korba Distt Bilaspur (M.P.)

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1681 of 1999

Petitioner		Shiv Kumar Soni
	Versus	
Respondents		Chairman-cum-Managing Director, South Eastern Coal Field Ltd. & others

Post for order on 27th April, 2006.

Sd/-
Satish K. Agnihotri
Judge
26.4.2006

99

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 1681 of 1999

Petitioner — Shiv Kumar Soni

Versus

Respondents — Chairman-cum-Managing Director, South Eastern Coal Field Ltd. & others

Single Bench : Hon'ble Mr. Justice **Satish K. Agnihotri**.

Smt. Smitha Ghai, Advocate for the petitioner.

Shri P. S. Nair, Senior Advocate with Shri Vinod Deshmukh, Advocate for the respondents.

ORDER

(April, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner, undisputedly completed his I.T.I. apprenticeship during the period from 7.2.1986 to 7.2.1988 at South Eastern Coal Fields Ltd., Manikpur Colliery. On the basis of his apprenticeship certificate, the petitioner applied for appointment on the post of General Mazdoor Category-I. The admitted case of the petitioner is that the petitioner appeared in written test on 3.12.1997 and interview held on 6.12.1997 and the petitioner was found in the select list at serial No. 99. Out of the said select list 42 persons were appointed on the basis of the available vacancies. The petitioner was again interviewed on 10.9.1998 but his case was not considered for appointment on the ground of being age-barred.

2. The contention of Smt. Smitha Ghai, learned counsel appearing for the petitioner is that the petitioner being a member of other backward class (O.B.C.), is entitled to relaxation in age and also in view of the judgment and order of the Supreme Court in **U. P. State Road Transport Corporation and another Vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh and others** {(1995) 2 S.C.C. 1}.

3. The petitioner has filed this petition seeking a writ of mandamus or any other appropriate direction, commanding the respondents to appoint the petitioner on the post of General Mazdoor Category-1.

4. On the other hand, Shri P. S. Nair, learned Senior counsel, assisted by Shri Vinod Deshmukh, learned counsel appearing for the respondents, submitted that the petitioner had produced the O.B.C. category certificate at the time of interview, not earlier. Even otherwise the case of the petitioner was considered giving all the reliefs as has been directed by the Supreme Court in the case of **U. P. State Road Transport Corporation and another** (supra). The petitioner has been found age-barred. It was further contended that it has been held by the Supreme Court in the case of **Chairman/MD, Mahanadi Coalfields Ltd. and others Vs. Sadashib Behera & others** (2005) 2 S.C.C. 396 as under:-

> "7. These provisions show that apprentice is a person who is undergoing a training in pursuance of a contract of apprenticeship duly registered with the Apprenticeship Adviser and the employer who is imparting training is under no obligation to offer any employment to such a person. The legislature has made the aforesaid position clear by making a specific provision in this regard namely Section 22 of the Act and sub-section (1) thereof lays down that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training. Sub-section (2) however

provides that notwithstanding anything in sub-section (1) where there is a condition in a contract of apprenticeship that an apprentice shall, after successful completion of apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Thus the provisions of the Act and the Rules made thereunder show that in absence of any condition in the contract which is entered into between the employer and the apprentice at the time of commencement of his apprenticeship training and which is registered with the Apprenticeship Adviser to the effect that the apprentice shall serve the employer, an apprentice cannot claim any right to get an employment on successful completion of his training. ....."

5. I have heard learned counsel for the parties and have perused the records appended to the writ petition and returns filed by the parties.

6. The Supreme Court in the case of **U. P. State Road Transport Corporation and another** (supra) observed as under:-

"7. The aforesaid provisions are sufficiently indicative of the fact that the training imparted is desired to be result-oriented; and the trainees are treated akin to employees. Even so, Section 22 of the Act states, and it is this provision which has been pressed into service by the appellants, that it shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment unless there be a condition in the contract to the contrary. The model contract form finding place in Schedule VI of the Rules echoes the voice of Section 22 (1) in its second para. The Corporation has placed on record a model contract form entered into between it and the trainees which also states about the aforesaid non-obligation."

7. It is clear from the observations of the Supreme Court, quoted above that it is not obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship in absence of any condition in the contract which is entered into between the employer and the apprentice at the time of commencement of his apprenticeship training. The direction of the Supreme Court in **U. P. State Road Transport Corporation** (supra) still holds good as it has neither been amended nor modified by any other subsequent decision. The decision of the Supreme Court in **Chairman/MD, Mahanadi Coalfields Ltd. and others** (supra) approves the observations made in the case of **U. P. State Road Transport Corporation and another,** hence, the contention of the respondents that the decision of the Supreme Court in the case of **Chairman/MD, Mahanadi Coalfields Ltd. and others** has modified the earlier decision in the case of **U. P. State Road Transport Corporation and another** (supra) is not sustainable. Accordingly, the respondents are directed to comply with the directions passed by the Supreme Court in the case of **U. P. State Road Transport Corporation and another** (supra), in the following terms:-

(1) Other things being equal, a trained apprentice should be given preference over direct recruits.

(2) For this, a trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in Union of India v. N. Hargopal[1] would permit this.

(3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the service rule concerned. If the service rule be silent on this aspect, relaxation to the extent of the

period for which the apprentice had undergone training would be given.

(4) The training institute concerned would maintain a list of the persons trained yearwise. The persons trained earlier would be treated as senior to the persons trained later. In between the trained apprentices, preference shall be given to those who are senior."

7. For the reasons stated above, this petition is partly allowed to the above extent. In the facts of the case there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur